

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
Margaret A. Gurley.

Plaintiff,

-against -

COMPLAINT

Tate & Kirlin Associates, Inc..

Defendant.

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Margaret A. Gurley, above-named Plaintiff herein, by and through his attorney, JAY S. FLEISCHMAN, as and for his complaint alleges as follows:

INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* (hereinafter "FDCPA") which prohibits collectors from engaging in abusive, deceptive and unfair collection practices.

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. §1692k and 28 U.S.C. §1337.
3. Venue in this District is proper pursuant to 28 U.S.C. §1391(b).

PARTIES

4. Plaintiff is a natural person who resides in Bronx, New York.
5. Plaintiff is a consumer as defined by 15 U.S.C. §1692a(3).
6. Defendant, TATE & KIRLIN ASSOCIATES, INC. (hereinafter "Defendant") is believed to be a Pennsylvania corporation with a principal place of business in Philadelphia, Pennsylvania and a mailing address at 2810 Southampton Rd, Philadelphia, PA 19154.
7. The principal purpose of Defendant is the collection of debts using the mails and telephone

and Defendant regularly attempts to collect debts alleged to be due another. Defendant is a "debt collector" as that term is contemplated in the FDCPA, 15 U.S.C. §1692a(6).

FACTUAL ALLEGATIONS

8. At all times relevant hereto, Defendant was hired by Key Bank and/or Landmark America to collect a debt relating to a consumer credit transaction that was allegedly owed to Key Bank and/or Landmark America and bearing account number 3578515.
9. The alleged debt at issue arose out of a transaction which was primarily for personal, family or household purposes.
10. On December 2, 2004, the Defendant was notified in writing by FleischmanLaw, P.C. of the fact that FleischmanLaw, P.C. represented Plaintiff in connection with the debt allegedly owed to Key Bank and/or Landmark America and bearing account number 3578515 (hereinafter "December 2, 2004 Correspondence", annexed hereto). Said December 2, 2004 Correspondence requested information necessary to verify the validity of the debt alleged to be due, and clearly indicated that all communications regarding the debt alleged to be due were to be made directly to FleischmanLaw, P.C. in writing.
11. The December 2, 2004 Correspondence was sent to Defendant via facsimile to a number maintained by Defendant.
12. The Defendant received the December 2, 2004 Correspondence on December 3, 2004 at 1:08pm. A copy of the facsimile transmission report is annexed hereto.
13. On January 28, 2005 Defendant once again communicated with Plaintiff by written correspondence (hereinafter "January 28, 2005 Correspondence", annexed hereto), in spite of having been advised of the fact that Plaintiff was represented by counsel.
14. At no time between December 3, 2004 at 1:08pm and January 28, 2005 did Defendant provide to Plaintiff's counsel the information requested in the December 2, 2004 Correspondence.

15. Defendant acted in a false, deceptive, misleading and unfair manner by communicating directly with Plaintiff after Defendant knew Plaintiff to be represented by an attorney with regard to the subject debt and had knowledge of such attorney's name and address.
16. Defendant knew or should have known that its actions violated the FDCPA. Additionally, Defendant could have taken steps necessary to bring its actions within compliance with the FDCPA, but neglected to do so and failed to adequately review its actions to insure compliance with said law.
17. At all times pertinent hereto, Defendant was acting by and through its agents, servants and/or employees, who were acting within the scope and course of their employment, and under the direct supervision and control of Defendant herein.
18. At all times pertinent hereto, the conduct of Defendant, as well as that of its agents, servants and/or employees, was malicious, intentional, reckless, negligent and in wanton disregard for federal and state law and the rights of the Plaintiff herein.

CLAIM FOR RELIEF – VIOLATION OF FDCPA

19. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.
20. The above contacts to Plaintiff by Defendant are “communications” relating to a “debt” as defined by 15 U.S.C. § 1692a(2) and 1692a(5) of the FDCPA.
21. Defendants violated the FDCPA. Defendants' violations include, but are not limited to, the following:
- a) The Defendants violated 15 U.S.C. § 1692c(2) by communicating with the Plaintiff at a time when the Defendant knew the Plaintiff to be represented by an attorney with respect to such debt and had knowledge of, or can readily ascertain, such attorney's name and address.
22. Defendant's acts as described above were done with malicious, intentional, willful, reckless,

wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of coercing Plaintiff to pay the debt alleged to be due.

23. As a result of the above violations of the FDCPA, the Defendants are liable to Plaintiff for statutory damages, and costs and attorney's fees.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendants in the amount of:

1. Statutory damages pursuant to 15 U.S.C. § 1692k in an amount to be determined at the time of trial.
2. Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k.
3. For such other and further relief as may be just and proper.

Dated: New York, NY
November 17, 2005


Jay S. Fleischman (JF 5433)
Attorney for Plaintiff
FleischmanLaw, P.C.
15 Maiden Lane, Suite 2000
New York NY 10038
212.785.1136
jayf@fleischmanlaw.com

Plaintiff requests trial by jury on all issues so triable.


Jay S. Fleischman (JF 5433)

FLEISCHMANLAW, P.C.

ATTORNEYS AND COUNSELLORS AT LAW

15 MAIDEN LANE, SUITE 2000
NEW YORK, NEW YORK 10038
TELEPHONE: 212.785.1136

December 2, 2004

VIA FACSIMILE ONLY - 215.464.6316

Tate & Kirlin Associates
2810 Southampton Road
Philadelphia, PA 19154

Re: Our Client: Margaret A Gurley
Creditor: Key Bank
Account No.: 3578515

To Whom It May Concern:

Please be advised that FleischmanLaw, P.C. represents the above-named individual in connection with the above-referenced debt. Please let this serve as notice of our representation.

Any future communications regarding this debt must be made through this office in writing; no further direct communications with our client are permitted. In addition, no telephone calls will be accepted by this office.

Please provide this office with a written notice containing the following information:

1. the amount of the debt;
2. the name of the creditor to whom the debt is owed;
3. the name and address of the original creditor, if different from the current creditor;
4. copies of all agreements relating to the transfer of this debt from the original creditor, if the debt has been transferred;
5. copies of all agreements alleged to have been executed by our client in relation to this debt;
6. copies of statements of account in relation to this debt;
7. information regarding charges, payments, calculation of finance charges and late fees to the extent applicable; and
8. evidence of your company's authority to charge continuing finance charges and/or late fees with respect to this alleged debt.

Upon receipt and review of the above, this office will notify you of our client's intention with respect to the debt alleged to be due.

Your immediate attention and compliance is expected.

Very truly yours,

 / NVM
JAY S. FLEISCHMAN

*** ACTIVITY REPORT ***

TRANSMISSION OK

TX/RX NO. 1518

TTI FLPC-DRLCNY

CONNECTION TEL 12154646316

CONNECTION ID

START TIME 12/03 13:08

USAGE TIME 00'43

PAGES 1

RESULT OK



2810 Southampton Road
Philadelphia PA 19154
RETURN SERVICE REQUESTED

TATE & KIRLIN ASSOCIATES

2810 Southampton Road • Philadelphia, PA 19154
Toll Free (877) 982-0001 • (267) 407-0101

January 28, 2005

Original Creditor: Key Bank
Client Ref: 16LS1986
Account #: 3578515
Total Due: \$2267.67

3578515 - 030 - 005561

Margaret A Gurley

Apt 4A

423 Saint Anns Ave

Bronx NY 10454-1021



Tate & Kirlin Associates

2810 Southampton Rd

Philadelphia PA 19154-1207



*** Detach Upper Portion and Return with Payment ***

TATE10305128073381

Client: LANDMARK AMERICA
Client Ref #: 16LS1986
Account #: 3578515

IMPORTANT NOTICE

Our client has authorized us to offer a limited time settlement for 60% of your balance or \$1360.60 to resolve your account. This payment must be received in our office by 02/18/05 or this offer is void.

Please contact our office at our toll free number should you need a time extension to take advantage of this offer.

Please retain the lower portion of this letter for your records.

Very Truly Yours,

Yours truly,

Mark Brewer

Licensed by New York City Department of Consumer Affairs #1026676

This is an attempt to collect a debt and any information obtained will be used for that purpose. Tate & Kirlin Associates is a professional debt collection company.

Change of Address _____ City _____ State _____ Zip _____

Home Telephone #: _____ Business Phone: _____